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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

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| DEANNA L. BEARD,<br>398-74-6767<br><br>Plaintiff<br><br>v.<br><br>FLYING J., INC. and RICHARD KROUT,<br><br>Defendants. | *<br>*<br>*<br>*<br>*<br>*<br>*<br>*<br>*<br>*<br>*<br>* | 3-98-CV-90106<br><br>PRELIMINARY AND FINAL INSTRUCTIONS TO THE JURY |

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## PRELIMINARY INSTRUCTION NO. 1
## PRELIMINARY INSTRUCTIONS

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed. In considering these instructions, the order in which they are given is not important.

## PRELIMINARY INSTRUCTION NO. 2
## STATEMENT OF THE CASE

The following brief summary of the case is not to be considered evidence or proof of any facts or events in the case. It simply informs you of the factual disputes between the parties.

This is a civil case brought by Plaintiff, Deanna Beard, against her former employer, Flying J, Inc. and her former supervisor, Richard Krout. The claims allegedly occurred during her employment with Flying J, Inc.

More specifically, Mrs. Beard alleges that she was subjected to sexual harassment by her supervisor Richard Krout commencing in April of 1998 and continuing through May of 1998. She alleges that the actions of Mr. Krout created a sexually hostile work environment. She also alleges that she was "constructively discharged" by Flying J, Inc. in that it was reasonably forseeable that Mrs. Beard would quit because the working conditions at Flying J. Inc. under Mr. Krout's management had become intolerable.

Further, Mrs. Beard also alleges that Mr. Krout committed assault and battery against her while she was employed at Flying J, Inc.

Both Flying J, Inc. and Richard Krout deny all claims made by Mrs. Beard.

## PRELIMINARY INSTRUCTION NO. 3
## ELEMENTS OF CLAIMS AND DEFENSES

To help you follow the evidence, here is a brief summary of the elements of Mrs. Beard's claims against Flying J, Inc. and Mr. Krout.

**Claim #1. Sexually hostile environment**

To win her claim of a sexually hostile work environment, Mrs. Beard must prove each of the following elements by the greater weight of the evidence:

*One*, Mrs. Beard was subjected to sexually offensive conduct or conditions imposed by her supervisor, Richard Krout;

*Two*, that such conduct was based upon Mrs. Beard's sex or gender;

*Three*, that the conduct was unwelcome by Mrs. Beard;

*Four*, that the conduct was sufficiently severe or pervasive that a reasonable person in Mrs. Beard's position would find the work environment sexually hostile or abusive; and

*Five*, at the time the conduct occurred and as a result of the conduct, Mrs. Beard believed her work environment to be sexually hostile or abusive.

If Mrs. Beard fails to prove any of the five elements listed above by a greater weight of evidence, your verdict shall be for Flying J, Inc. and Richard Krout on Mrs. Beard's claim of a sexually hostile work environment.

However, if you find that Mrs. Beard has proven all of these elements by the greater weight of the evidence, then Mrs. Beard may be entitled to damages.

**Claim #2. Constructive discharge**

Mrs. Beard has also claimed that she was constructively discharged from Flying J, Inc. To win her claim of constructive discharge, Mrs. Beard must prove the following two essential elements by the greater weight of the evidence:

*One*, Flying J, Inc.'s creation of a sexually hostile environment made Mrs. Beard's working conditions intolerable;

*Two*, Mrs. Beard's quitting her job was a reasonably foreseeable result of Flying J, Inc.'s actions.

If Mrs. Beard has failed to prove each of the above elements by the greater weight of the evidence, your verdict must be for Flying J, Inc. and Richard Krout on Mrs. Beard's claim of constructive discharge.

Additionally, if you find Mrs. Beard has proven the elements of claim #1 (sexually hostile environment) but has not proven the elements of claim #2 (constructive discharge), then you must consider whether Flying J, Inc. has proven both elements of the following affirmative defense by the greater weight of the evidence:

**Flying J, Inc.'s affirmative defense**

*One*, Flying J, Inc. exercised reasonable care to prevent and to correct promptly any sexually harassing behavior; *and*

*Two*, Mrs. Beard unreasonably failed to take advantage of any preventative or corrective opportunities provided by Flying J, Inc. or to otherwise avoid the harm.

If Flying J, Inc. has failed to prove both elements of this affirmative defense, and Mrs. Beard has proven all of the elements of her claim of a sexually hostile environment, then Mrs. Beard is entitled to damages in some amount on her hostile environment claim. However, if Flying J, Inc. has proven both elements of its affirmative defense, you must find in favor of Flying J, Inc. on this claim. This affirmative defense is not available to Mr. Krout.

**Claim #3. Assault**

In order to prove the claim of assault, Mrs. Beard must prove the following propositions:

1. That Richard Krout made unwanted sexual advances toward Deanna Beard, including unwanted and unsolicited physical touching.
2. The act was done with the intent to put Deanna Beard in fear of physical contact which would be insulting or offensive.
3. Deanna Beard reasonably believed that the act would be carried out immediately.
4. Richard Krout's act was a proximate cause of Deanna Beard's damage.
5. The amount of her damages.

If Mrs. Beard has failed to prove any of these propositions, she is not entitled to damages. If the plaintiff has proven all of these propositions, the plaintiff is entitled to damages in some amount.

Iowa Civil Jury Instruction No. 1900.1

**Claim #4. Battery**

In order to prove the claim of batter, Mrs. Beard must prove the following propositions:

1. That Richard Krout made unwanted sexual advances toward Deanna Beard, including unwanted and unsolicited physical touching.
2. The act was done with the intent to cause insulting or offensive bodily contact.
3. Richard Krout's act resulted in insulting or offensive bodily contact.
4. Richard Krout's act was a proximate cause of Deanna Beard's damage.
5. The amount of damages.

If Mrs. Beard has failed to prove any of these propositions, she is not entitled to damages. If the plaintiff has proven all of these propositions, the plaintiff is entitled to damages in some amount.

Iowa Civil Jury Instruction No. 1900.3

## PRELIMINARY INSTRUCTION NO. 4
## DUTY OF JURORS

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are and then apply those facts to the law which I will give you in these preliminary instructions, any instructions given during the trial, and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I will give it to you.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. An individual, such as Mrs. Beard, and a corporation, such as Flying J, Inc., stand equal before the law, and are entitled to the same fair consideration by you. The mere fact that Flying J, Inc. is a corporation, and not an individual, does not mean that it is entitled to any greater or lesser consideration by you.

However, when a corporation is involved, of course, it may act only through natural persons as its agents or employees; and, in general, any agent or employee of the corporation may bind the corporation by the acts and declarations made while acting within the scope of the authority delegated to the employee by the corporation, or within the scope of the employee's or agent's duties as an employee or agent of the corporation.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

## PRELIMINARY INSTRUCTION NO. 5
## ORDER OF TRIAL

Before I give you further instructions, let me tell you how this trial will proceed.

First, the plaintiff's attorney will make an opening statement. Next, the defendant's attorney will make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiff will then present evidence and witnesses and the defendant may cross-examine. Following the plaintiff's case, the defendant may present evidence and witnesses and the plaintiff may cross-examine. Following the defendant's case, the plaintiff may take further opportunity to present additional evidence.

After the presentation of evidence is completed, I will give you the final instructions on the law that you are to apply in reaching your verdict. The attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then give you some final instructions on deliberations. After that you will retire to deliberate on your verdict.

## PRELIMINARY INSTRUCTION NO. 6
## DEFINITION OF EVIDENCE

You shall base your verdict only upon the evidence, these instructions, and other instructions that I may give you during trial.

"Evidence" is:

1. Testimony in person or testimony previously given, which includes depositions or videotaped depositions.
2. Exhibits admitted into evidence by the court.
3. Stipulations, which are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

The following are not evidence:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I shall tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

## PRELIMINARY INSTRUCTION NO. 7
## CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You may hear testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinions on matters in that field and the reasons for their opinions. Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Also, an expert witness may be asked to assume certain facts are true and to give an opinion based on that assumption. This is called a hypothetical question. If any facts assumed in the question are not proved by the evidence, you should decide if that omission affects the value of the expert's opinion.

## PRELIMINARY INSTRUCTION NO. 8
## STIPULATED FACTS

The plaintiff and defendant have agreed or "stipulated" to certain facts and have reduced these facts to a written agreement or stipulation. Any counsel may, throughout the trial, read to you all or a portion of the stipulated facts. You should treat these stipulated facts has having been proved.

## PRELIMINARY INSTRUCTION NO. 9
## DEPOSITIONS

Certain testimony from a deposition may be read into evidence or played from a videotape. A deposition is testimony taken under oath before the trial and preserved in writing or on videotape. Consider that testimony as if it had been given in court.

## PRELIMINARY INSTRUCTION NO. 13
## NOTE-TAKING

If you want to take notes during the trial, you may. However, it is difficult to take detailed notes and pay attention to what the witnesses are saying. If you do take notes, be sure that your note-taking does not interfere with listening to and considering all the evidence. Also, if you take notes, do not discuss them with anyone before you begin your deliberations. Do not take your notes with you at the end of the day. Be sure to leave them on your chair in the courtroom. The court attendant will safeguard the notes. No one will read them. The notes will remain confidential throughout the trial and will be destroyed at the conclusion of the trial.

If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence. You cannot give this responsibility to someone who is taking notes. We depend on the judgment of all members of the jury; you must all remember and consider the evidence in this case.

Whether or not you take notes, you should rely on your own memory regarding what was said. Your notes are not evidence. A juror's notes are not more reliable than the memory of another juror who chooses to consider the evidence carefully without taking notes.

You will notice that we do have an official court reporter making a record of the trial. However, we will have not typewritten transcripts of this record available for your use in reaching your verdict.

## PRELIMINARY INSTRUCTION NO. 14
## BURDEN OF PROOF

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. Plaintiff Deanna Beard has the burden of proving by the greater weight of the evidence her claims of a sexually hostile environment, constructive discharge, assault, and battery. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, then you must conclude that issue has not been proved.

The "greater weight of the evidence" is not necessarily determined by the greater number of witnesses or exhibits a party has presented. The testimony of a single witness that produces a belief in the likelihood of truth is sufficient for proof of any fact and would justify a verdict in accordance with such testimony. This is so, even though a number of witnesses may have testified to the contrary, if after consideration of all of the evidence in the case, you hold a greater belief in the accuracy and reliability of that one witness.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

## PRELIMINARY INSTRUCTION NO. 15
## ADMONITION

To ensure fairness, you as jurors must obey the following rules:

*First*, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

*Third*, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

*Fourth*, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side - even if it is simply to pass the time of day - an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, remember it is because they are not supposed to talk or visit with you either.

*Fifth*, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know more about the matter than anyone will learn through the news media.

*Sixth*, do not do any research or make any investigation about the case on your own.

*Seventh*, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

**Dated** this _____ day of June, 2000.

ROBERT W. PRATT
U.S. DISTRICT JUDGE

FINAL INSTRUCTION NO. 1
PLAINTIFF'S CLAIMS

Plaintiff Deanna Beard alleges that she was subjected to sexual harassment by her former supervisor Richard Krout and former employer Flying J, Inc. from approximately April of 1998 until May 20, 1998.

Mrs. Beard has two claims against Flying J. and three claims against Richard Krout.

As against Flying J:

Mrs. Beard alleges (1) that Flying J. (through its supervisor Richard Krout) created a sexually hostile work environment; and (2) that Mrs. Beard was "constructively discharged" from Flying J.

As against Richard Krout:

Mrs. Beard alleges (1) that Richard Krout created a sexually hostile work environment; (2) that Richard Krout committed assault against Mrs. Beard; and (3) that Richard Krout committed battery against Mrs. Beard.

Both Flying J and Richard Krout deny each of Mrs. Beard's claims. Flying J has also asserted an affirmative defense that you may have to consider in your deliberations. I will explain each of Mrs. Beard's claims, and Flying J's affirmative defense, in more detail in instructions that follow.

FINAL INSTRUCTION NO. 2
HOSTILE ENVIRONMENT HARASSMENT

To win her claim of a sexually hostile work environment, Mrs. Beard must prove each of the following elements by the greater weight of the evidence:

One, Mrs. Beard was subjected to sexually offensive conduct or conditions imposed by her supervisor, Richard Krout.

*Two*, that such conduct was based upon Mrs. Beard's sex or gender.

*Three*, that the conduct was unwelcome by Mrs. Beard.

Note: Conduct is "unwelcome" if the Plaintiff did not solicit or invite the conduct and regarded the conduct as undesirable or offensive.

*Four*, that the conduct was sufficiently severe or pervasive that a reasonable person in Mrs. Beard's position would find the work environment sexually hostile or abusive.

Note: Whether an environment is sufficiently hostile or abusive must be determined by looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a a mere offensive utterance; and whether it unreasonably interfers with an employee's work performance. However, no single factor is required in order to find a work environment sexually hostile or abusive. Anti-harassment law does not prohibit genuine but innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex. Therefore, simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to sexual harassment in the form of creation of a sexually hostile environment.

*Five*, at the time the conduct occurred and as a result of the conduct, Mrs. Beard believed her work environment to be sexually hostile or abusive.

If Mrs. Beard fails to prove any of the five elements listed above by a greater weight of evidence, Mrs. Beard can collect no damages from either Flying J or Richard Krout on her claim of a sexually hostile work environment and your verdict must be for Flying J, Inc. and Richard Krout on this claim.

However, if you find that Mrs. Beard has proven all of these elements by the greater weight of the evidence, then Mrs. Beard may be entitled to damages.

FINAL INSTRUCTION NO. 3
CONSTRUCTIVE DISCHARGE

Mrs. Beard asserts that Flying J's actions caused her "constructive discharge" from her employment, that is, forced her to quit her job.

A constructive discharge is not a separate claim under the anti-discrimination laws; however, if proved, a constructive discharge may entitle Mrs. Beard to additional damages that are available only if the wrongful conduct of Flying J resulted in loss of Mrs. Beard's employment.

To win her claim of constructive discharge, Mrs. Beard must prove the following two essential elements by the greater weight of the evidence:

*One*, Flying J made Mrs. Beard's working conditions intolerable.

Note: The conditions created by the employer must be such that a reasonable person would find them intolerable, not simply that the plaintiff found them intolerable.

*Two*, Mrs. Beard's quitting her job was a reasonably foreseeable result of Flying J's actions.

If Mrs. Beard has failed to prove both of these elements by the greater weight of the evidence, then you must find she was not constructively discharged from her employment with Flying J and your verdict must be for Flying J on Mrs. Beard's claim of constructive discharge.

Additionally, if you find Mrs. Beard has proven all the elements of her sexually hostile work environment claim (see Final Instruction No. 2) but has not proven the elements of constructive discharge (as explained in this Final Instruction), then you must consider whether Flying J, Inc. has proven both elements of the following affirmative defense by the greater weight of the evidence which I will explain in the next instruction.

FINAL INSTRUCTION NO. 4
FLYING J's AFFIRMATIVE DEFENSE

Use this instruction only if you have determined that Mrs. Beard has proven her claim of a sexually hostile work environment but has not proven her claim of constructive discharge claim.

In order for Flying J to succeed on its affirmative defense, Flying J must show, by a preponderance of the evidence, that:

*One*, Flying J, Inc. exercised reasonable care to prevent and to correct promptly any sexually harassing behavior; *and*

*Two*, Mrs. Beard unreasonably failed to take advantage of any preventative or corrective opportunities provided by Flying J, Inc. or to otherwise avoid the harm.

If Flying J, Inc. has failed to prove both elements of this affirmative defense, then Mrs. Beard is entitled to damages in some amount on her hostile environment claim.

However, if Flying J, Inc. has proven both elements of its affirmative defense then Mrs. Beard can collect no damages against Flying J on Mrs. Beard's sexually hostile work environment claim and you must find in favor of Flying J, Inc. on this claim.

This affirmative defense is not available to Mr. Krout.

FINAL INSTRUCTION NO. 5
ASSAULT (as against Richard Krout)

In order to prove the claim of assault, Mrs. Beard must prove the following propositions:

1. That Richard Krout made unwanted sexual advances toward Deanna Beard, including unwanted and unsolicited physical touching.
2. The act was done with the intent to put Deanna Beard in fear of physical contact which would be insulting or offensive. ("Intent" is defined in Final Jury Instruction No. 6A).
3. Deanna Beard reasonably believed that the act would be carried out immediately.
4. Richard Krout's act was a proximate cause of Deanna Beard's damage.
5. The amount of her damages.

If Mrs. Beard has failed to prove any of these propositions, she is not entitled to damages. If the plaintiff has proven all of these propositions, the plaintiff is entitled to an award of damages to compensate her for harm she suffered.

FINAL INSTRUCTION NO. 6
BATTERY (as against Richard Krout)

In order to prove the claim of battery, Mrs. Beard must prove the following propositions:

1. That Richard Krout made unwanted sexual advances toward Deanna Beard, including unwanted and unsolicited physical touching.
2. The act was done with the intent to cause insulting or offensive bodily contact. ("Intent" is defined in Final Jury Instruction No. 6A).
3. Richard Krout's act resulted in insulting or offensive bodily contact.
4. Richard Krout's act was a proximate cause of Deanna Beard's damage.
5. The amount of damages.

If Mrs. Beard has failed to prove any of these propositions, she is not entitled to damages. If the plaintiff has proven all of these propositions, the plaintiff is entitled to an award of damages to compensate her for harm she suffered.

FINAL INSTRUCTION NO. 7
DAMAGES IN GENERAL

The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance. In the event that you should find that Mrs. Beard is entitled to damages in accord with the other instructions, you must award her such sum as you find by the greater weight of the evidence will fairly and justly compensate her for any damages you find she sustained as a direct result of the wrongful conduct of Flying J and Richard Krout.

You must award the full amount for any item of damages that Mrs. Beard has proven, but a party cannot recover duplicate damages. In other words, do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage on the same claim.

Some items of damages, such as backpay, can only be awarded if you first find that Mrs. Beard was constructively discharged by the harassing conduct of Flying J.

In arriving at an item of damage, you cannot establish a figure by taking down the estimate of each juror as to that item of damage and agreeing in advance that the average of those estimates shall be your award of damage for that item.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under these Instructions by way of punishment (except for punitive damages as defined in Final Instruction Nos. 9-11) or through sympathy. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against any of the parties. The amount you assess for any item of compensatory damage must not exceed the amount caused by the defendants as proved by the evidence.

You are also instructed that a plaintiff has a duty under the law to "mitigate" his or her damages--that is, to exercise reasonable diligence under the circumstances to minimize his or her damages. Therefore, if you find that the defendant has proven by the greater weight of the evidence that Mrs. Beard failed to seek out or take advantage of an opportunity that was reasonably available to her, you must reduce her damages by the amount she reasonably could have avoided if she had sought out or taken advantage of such an opportunity.

Finally, you have heard evidence of allegedly harassing conduct by Flying J prior to April and May of 1998. You may consider this evidence as relevant background evidence, but you may award damages only for harassing conduct that occurred between the beginning of April 1998 and May 20, 1998.

Attached to these Instructions is a Verdict Form, which you must fill out upon completion of your deliberations. You should only award those damages, if any, that Mrs. Beard has proven by the greater weight of the evidence.

FINAL INSTRUCTION NO. 8
DAMAGES — ACTUAL

If you find in favor of Mrs. Beard on her claim of a sexually hostile work environment (as explained in Final Instruction No. 2), her claim of assault (as explained in Final Instruction No.12), or her claim of battery (as explained in Final Instruction No. 13), then you must award Mrs. Beard such sum as you find by the greater weight of the evidence that will fairly and justly compensate her for any damages you find she sustained as a direct result of Flying J's and/or Richard Krout's wrongful conduct identified in the claims upon which she has prevailed.

Mrs. Beard seeks three distinct types of damages and you must consider them separately:

*1. Compensatory damages.* Mrs. Beard seeks compensatory damages, including damages for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. If you find that Mrs. Beard was constructively discharged as the result of Flying J's wrongful actions, as constructive discharge is explained to you in Final Instruction No. 3, then you may award compensatory damages that are a direct result of that constructive discharge for the time period between: the beginning of April 1998 and the date of your verdict. However, if you find that Mrs. Beard was not constructively discharged by Flying J's wrongful actions, then you may only award compensatory damages that are a direct result of the hostile environment for the time period between: the beginning of April 1998 to May 20, 1998.

*2. Future compensatory damages.* Mrs. Beard also seeks *future* compensatory damages for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. If you find that Mrs. Beard has proven her claim of a sexually hostile work environment, then you may award these future compensatory damages from June 15, 2000 to a date in the future you believe she will no longer suffer such damages.

*3. Post-termination backpay.* Mrs. Beard also seeks an award of post-termination backpay, which is the amount of any wages and fringe benefits she would have earned from the date on which she quit (May 20, 1998) until the date of your verdict, minus the wages and fringe benefits, if any, she actually did earn during that time from other employment after quitting her job with Flying J. However, you may award post-termination backpay only if Flying J's wrongful conduct resulted in Mrs. Beard's constructive discharge (as explained in Final Instruction No. 3).

FINAL INSTRUCTION NO. 9
PUNITIVE DAMAGES AS AGAINST FLYING J

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award the injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

In order to award punitive damages, you must make two findings: (1) find in favor of Mrs. Beard on her claim of sexual harassment, and (2) find that Flying J, acting through its agent Richard Krout, engaged in discriminatory conduct with "malice or with reckless indifference" to Mrs. Beard's right to be free of sexual harassment. I will explain what "acting through its agent" means in Final Instruction No. 10. I will also explain to you in Final Instruction No. 11 what "malice or reckless indifference" means.

If you make both of these findings, then in addition to any other damages to which you find Mrs. Beard is entitled, you may, but are not required to, award Mrs. Beard an additional amount as punitive damages if you find it is appropriate to punish Flying J or to deter Flying J from like conduct in the future. Should you decide to award punitive damages, you may only award them as against Flying J and not against Richard Krout. Remember, whether to award Mrs. Beard punitive damages and the amount of those punitive damages are within your sound discretion.

FINAL INSTRUCTION NO. 10
ACTING THROUGH ITS AGENT

When I say "acting through its agent," I mean merely to say that an employer like Flying J may be liable for punitive damages resulting from the discriminatory or unlawful employment conduct of its managerial agent Richard Krout.

However, you may not award punitive damages against Flying J if you find Flying J made good faith efforts to comply with anti-discrimination laws. In other words, you may not award punitive damages against Flying J for the conduct of Richard Krout where such conduct is contrary to Flying J's good faith efforts to comply with anti-discrimination laws.

FINAL INSTRUCTION NO. 11
MALICE OR WITH RECKLESS INDIFFERENCE–DEFINED

For the purpose of imposing punitive damages, "malice" means the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury. "Reckless indifference" means acting with knowledge of a substantial risk of harm to another. The terms "malice" or "reckless indifference" pertain to Flying J's knowledge that it may be acting in violation of federal law, not its awareness that it is engaging in discrimination.

To be liable in punitive damages, an employer must at least discriminate in the face of a perceived risk that its actions will violate federal law.

Factors you may consider in awarding punitive damages include, but are not limited to, the following: the nature of the defendant's conduct; the impact of the defendant's conduct on the plaintiff; the relationship between the plaintiff and the defendant; the likelihood that the defendant would repeat the conduct if a punitive award is not made; the defendant's financial condition; Mrs. Beard's actual damages; and any other circumstances shown by the evidence, including any circumstances of mitigation, that bear on the question of the size of any punitive award.

FINAL INSTRUCTION NO. 12
ASSAULT

In order to prove the claim of assault, Mrs. Beard must prove the following propositions:

1. That Richard Krout made unwanted sexual advances toward Deanna Beard, including unwanted and unsolicited physical touching.
2. The act was done with the intent to put Deanna Beard in fear of physical contact which would be insulting or offensive.
3. Deanna Beard reasonably believed that the act would be carried out immediately.
4. Richard Krout's act was a proximate cause of Deanna Beard's damage. (Proximate cause is defined in Final Instruction No. 14)
5. The amount of damages.

If Mrs. Beard has failed to prove any of these propositions, she is not entitled to damages. If the plaintiff has proven all of these propositions, the plaintiff is entitled to damages in some amount. If you find that Mr. Krout's conduct constituted willful and wanton disregard for the rights and safety of Mrs. Beard, you may award punitive damages against Mr. Krout. Final Instruction No. 15 explains how to assess punitive damages against Mr. Krout.

Iowa Civil Jury Instruction Nos. 1900.1 and 1900.2.

FINAL INSTRUCTION NO. 13
BATTERY

In order to prove the claim of battery, Mrs. Beard must prove the following propositions:

1. That Richard Krout made unwanted sexual advances toward Deanna Beard, including unwanted and unsolicited physical touching.
2. The act was done with the intent to cause insulting or offensive bodily contact.
3. Richard Krout's act resulted in insulting or offensive bodily contact.
4. Richard Krout's act was a proximate cause of Deanna Beard's damage. (Proximate cause is defined in Final Instruction No. 14)
5. The amount of damages.

If Mrs. Beard has failed to prove any of these propositions, she is not entitled to damages. If the plaintiff has proven all of these propositions, the plaintiff is entitled to damages in some amount. If you find that Mr. Krout's conduct constituted willful and wanton disregard for the rights and safety of Mrs. Beard, you may award punitive damages against Mr. Krout. Final Instruction No. 15 explains how to assess punitive damages.

Iowa Civil Jury Instruction No. 1900.3

FINAL INSTRUCTION NO. 14
PROXIMATE CAUSE – DEFINED

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

"Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

Iowa Civil Jury Instruction No. 700.3

FINAL INSTRUCTION NO. 15
PUNITIVE DAMAGES FOR THE ASSAULT AND BATTERY CLAIMS

Punitive damages may be awarded if the plaintiff has proven by the greater weight of the evidence that Mr. Krout's conduct constituted willful and wanton disregard for the rights and safety of Mrs. Beard and caused actual damage to her.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant (here Mr. Krout) and others from like conduct in the future.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In fixing the amount of punitive damages, you may consider all the evidence including:

1. The nature of Mr. Krout's conduct
2. The amount of punitive damages which will punish and discourage like conduct by Mr. Krout in view of his financial condition.
3. Mrs. Beard's actual damages.

Iowa Civil Jury Instruction No. 210.1

**Dated** this _____ day of June, 2000.

_____
ROBERT W. PRATT
U.S. DISTRICT JUDGE

Final INSTRUCTION NO. 16

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person so elected is responsible for the orderly, proper and free discussion of the issues by any juror who wishes to express his or her views. The foreperson will supervise the balloting and sign the interrogatories that are in accord with your decision and will also sign any written inquiries addressed to the Court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans or advocates. You are judges--judges of the facts. Your sole interest is to ascertain the truth.

INSTRUCTION NO. _____

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Submitted to you with these instructions is the special verdict form. After you have agreed and appropriately signed the verdict form in accordance with the directions contained therein, inform the jury officer outside the room. You will have the verdict signed only by one of your number whom you will have selected as your foreperson and return with it into court.